be judged likely or unlikely to influence the verdict. Thus, one who manufactured articles for a company with which a party was connected was held to be incompetent as a juror. *Laidlaw v. Sage,* 37 N. Y. Supp. 770. But the mere relation of debtor and creditor between a party and a juror does not disqualify the juror. *Thompson v. Douglass,* 35 W. Va. 337.

JURY—RIGHT TO JURY TRIAL—WAIVER OF JURY.—JENNINGS V. STATE, 114 N. W. 492 (WIS.)—*Held,* one pleading not guilty to an information charging felony or misdemeanor cannot, in the absence of a statute conferring the right, waive a jury, nor waive a right to trial by a common-law jury of twelve jurors. Marshall, J., *dissenting.*

At common law a jury was an essential part of any court which had jurisdiction to try persons charged by indictment and could not be waived. *Paulsen v. People,* 195 Ill. 507. While in civil cases the right to a jury trial is a mere privilege for the benefit of the litigants which may be waived, *Baird v. Mayor,* 74 N. Y. 382, in criminal cases the court is without jurisdiction in the absence of a jury, and jurisdiction cannot be conferred by consent. *State v. Maine,* 27 Conn. 281. In some States the rule does not apply to trials for misdemeanors. *State v. Alderton,* 50 W. Va. 101; *Levi v. State,* 4 Baxt. (Tenn.) 289. Consistently, when the jury trial cannot be waived it has been held that the common-law number of jurors cannot be waived. *Cancemi v. People,* 18 N. Y. 128; *State v. Mansfield,* 41 Mo. 470. *Contra, State v. Kaufman,* 51 Ia. 578; *Com. v. Dailey,* 12 Cush. (Mass.) 80. Some States by statute confer the right to waive. Such statutes have been held not in conflict with the State constitutions, *People v. Noll,* 20 Cal. 164; *State v. Abbee,* 61 N. H. 42; or with the Constitution of the United States, *Hallinger v. Davis,* 146 U. S. 314.

MASTER AND SERVANT—CONTRIBUTORY NEGLIGENCE—BURDEN OF PROOF.—CRAWFORD & MCCRIMMON CO. V. GOSE, 82 N. E. 984 (IND.).—*Held,* that in an action against an employer for injuries to an employee, the burden of proving contributory negligence rests on the employer.

In some jurisdictions the rule seems to be well settled that the burden is on the plaintiff to show by a preponderance of evidence that he was free from contributory negligence, *Connolly v. Waltham,* 156 Mass. 368, including ignorance of defects causing the injury, *Wiggins Ferry Co. v. Hill,* 112 Ill. App. 475; *Belair v. Chicago, etc., R. Co.,* 43 Iowa, 662; even when the action is brought under an employer's liability statute with no provisions on this particular point. *Taylor v. Carew Mfg. Co.,* 143 Mass. 470. Where all the circumstances attending the accident are in evidence, fair inference will take the place of positive evidence of plaintiff's due care. *Tyndale v. Old Colony R. Co.,* 156 Mass. 503; *Vorhees v. Hudson River Tel. Co.,* 109 N. Y. App. Div. 465. Still other jurisdictions hold that if the plaintiff proves the master negligent, he thus throws upon the defendant master the burden of showing contributory negligence. *Godfrey v. Beattyville Coal Co.,* 101 Ky. 339; *Johnston v. Richmond, etc., R. Co.,* 95 Ia. 685. But in the majority of the states contributory negligence is regarded as an affirmative defense which must be proved by the defendant. *Bonn v. Galveston, etc., R. Co.,* 82 S. W. 808 (Tex.); *Boweing v. Wilmington Malleable Iron Co.,* 66 Atl. 369 (Del.); *Northern Pac. R. Co. v. Tynan,* 119 Fed. 288; *Stewart v. Raleigh & A. Air Line R. Co.,* 53 S. E. 877, (N. C.). On the other hand, where contributory